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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,976	12/21/2004	Wilfried Kletscher	5255-42PUS	2902
27799 7590 04/05/2007 COHEN, PONTANI, LIEBERMAN & PAVANE 551 FIFTH AVENUE SUITE 1210 NEW YORK, NY 10176			EXAMINER SPAHN, GAY	
			ART UNIT 3635	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/05/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/518,976

Applicant(s)

KLETSCHER, WILFRIED

Examiner

Gay Ann Spahn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 21 December 2004.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Priority***

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on 25 April 2003. It is noted, however, that there is no certified copy of the DE 2003 06 551.4 application as required by 35 U.S.C. 119(b) present in the image file wrapper (IFW).

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on 21 December 2007 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

However, the examiner notes that the three references listed in the Foreign Patent Documents section (namely, GB 736,439 to Martens, GB 2,292,974 to Mul T Lok, and GB 226,264 to Thomas) have been lined through as not being considered because Applicant did not provide the examiner with a copy of these foreign references as required by 37 CFR 1.98.

### ***Drawings***

The drawings are objected to because:

(1) the legends "Fig. 1", "Fig. 2", "Fig. 3", and "Fig. 4" must be made larger in accordance with 37 CFR 1.84(u)(2), second sentence, which states that the "view numbers must be larger than the numbers used for reference characters;

(2) Fig. 1, the lead line leading to reference numeral 5 appears to be dashed and it is not understood why this lead line would be dashed; and

(2) Fig. 4, the arcuate line ending in arrowheads on both sides at the left-hand side of the figure and the straight line ending in arrowheads on both sides at the bottom of the figure should each have a lead line leading therefrom to a reference numeral and the reference numeral should be discussed in the specification as to what the arcuate and straight line ending in arrowheads mean.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: claim 13's recitation that the stub axle is journaled for rotation in the profile does not have antecedent basis in the specification.

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 10, 11, 17, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by HORGAN, JR. (U.S. Patent No. 4,688,406).**

**As to claim 10, HORGAN, JR. discloses a fixing device (20 in Fig. 1) for a movable wall (10), the fixing device comprising:**

**a profile (14, 14 of 12) which can receive the movable wall (10);**

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a fixing element (50) which can be moved linearly with respect to said profile (12), into and out of a working position (Fig. 4 and Fig. 3, respectively);

a turning knob (key, as described in col. 4, lines 54-58, in collar 42 and lock cylinder 41 which is turn rotates locking tab 43) mounted for rotation in said profile (12);  
and

means (44, 46, 47, 49) for translating rotation of the knob (key, 41, 42, 43) into linear movement of the fixing element (50).

**As to claim 11,** HORGAN, JR. discloses the fixing device of claim 10 as discussed above, and HORGAN, JR. also discloses that said profile (upper 14 of 12 in Fig. 5) has a recess (unnumbered opening in upper 14 of Fig. 5 in which 41 is located) which receives said turning knob (key, 41, 42, 43).

**As to claim 17,** HORGAN, JR. discloses the fixing device of claim 10 as discussed above, and HORGAN, JR. also discloses that the fixing element (50) is a catch pin.

**As to claim 18,** HORGAN, JR. discloses the fixing device of claim 10 as discussed above, and HORGAN, JR. also discloses that said profile (12) comprises a rail (web 13 of door shoe 12 into which screws 36 are fastened), said device further comprising a carrier (21) secured to said rail (13), said carrier (21) guiding said fixing element (50) for linear movement.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 10, 11, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over HORGAN, JR. (U.S. Patent No. 4,688,406) in view of MILLER ET AL. (U.S. Patent No. 6,622,534).**

As to claim 10, HORGAN, JR. discloses a fixing device (20 in Fig. 1) for a movable wall (10), the fixing device comprising:

- a profile (14, 14 of 12) which can receive the movable wall (10);
- a fixing element (50) which can be moved linearly with respect to said profile (12), into and out of a working position (Fig. 4 and Fig. 3, respectively); and
- means (44, 46, 47, 49) for translating rotation of the lock cylinder (41) into linear movement of the fixing element (50).

In the alternative, HORGAN, JR. fails to explicitly disclose a turning knob mounted for rotation in said profile.

MILLER ET AL. discloses that key and key cylinders may be replaced by other actuating structure such as a rotatable knob (see col. 13, lines 44-49).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the fixing device of HORGAN, JR. by replacing the key and key cylinder with a rotatable knob as taught by MILLER ET AL. in order to be able to have something easier to hold onto to move the fixing element from its retracted position to its extended position and vice versa.

**As to claim 11,** HORGAN, JR. in view of MILLER ET AL. discloses the fixing device of claim 10 as discussed above, and the resulting fixing device from the combination of HORGAN, JR. in view of MILLER ET AL. also discloses that said profile (upper 14 of 12 in Fig. 5 of HORGAN, JR.) has a recess (unnumbered opening in upper 14 of Fig. 5 of HORGAN, JR. in which 41 is located) which receives said turning knob (lock cylinder 41 of HORGAN, JR. replaced by rotatable knob of MILLER ET AL. (see col. 13, lines 44-49)).

**As to claim 17,** HORGAN, JR. in view of MILLER ET AL. discloses the fixing device of claim 10 as discussed above, and HORGAN, JR. also discloses that the fixing element (50) is a catch pin.

**As to claim 18,** HORGAN, JR. in view of MILLER ET AL. discloses the fixing device of claim 10 as discussed above, and HORGAN, JR. also discloses that said profile (12) comprises a rail (web 13 of door shoe 12 into which screws 36 are fastened), said device further comprising a carrier (21) secured to said rail (13), said carrier (21) guiding said fixing element (50) for linear movement.

**Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over HORGAN, JR. (U.S. Patent No. 4,688,406) in view of MILLER ET AL. (U.S. Patent No. 6,622,534), as applied to claim 10 above, and further in view of FILDAN (U.S. Patent No. 4,691,951).**

**As to claim 12,** HORGAN, JR. in view of MILLER ET AL. discloses the fixing device of claim 10 as discussed above.

However, neither HORGAN, JR. nor MILLER ET AL. explicitly discloses that the turning knob has a knurled circumferential surface.

FILDAN discloses that knob (either knob 1 or 2 in Fig. 1) has a knurled circumferential surface.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the fixing device of HORGAN, JR. in view of MILLER ET AL. by making the turning knob have a knurled circumferential surface as taught by FILDAN in order to be able to better turn the knob since it is notoriously well known in the art that knurling provides a roughened surface which is easier to grasp.

**Claims 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over HORGAN, JR. (U.S. Patent No. 4,688,406) in view of MILLER ET AL. (U.S. Patent No. 6,622,534), as applied to claim 10 above, and further in view of WIMMER (U.S. Patent No. 4,662,666).**

As to claim 13, HORGAN, JR. in view of MILLER ET AL. discloses the fixing device of claim 10 as discussed above.

However, neither HORGAN, JR. nor MILLER ET AL. explicitly discloses that the turning knob has a stub axle which is journaled for rotation in said profile.

WIMMER discloses a fixing device having a turning knob (5 or 6) with a stub axle (11 or 12) which is journaled (14 or 13) for rotation in said profile.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the fixing device of HORGAN, JR. in view of MILLER ET

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AL. by making the turning knob have a stub axle which is journaled for rotation as taught by WIMMER in order for the stub axle to turn more easily in the bearings with less frictional resistance.

**As to claim 14,** HORGAN, JR. in view of MILLER ET AL. and WIMMER discloses the fixing device of claim 13 as discussed above, and the resulting fixing device from the combination of HORGAN, JR. in view of MILLER ET AL. and WIMMER also discloses an eccentric pin (46 of HORGAN, JR.) fixed to said turning knob (rotatable knob of MILLER ET AL. or 5 or 6 of WIMMER), and a slotted link (47 of HORGAN, JR.) fixed to the fixing element (50), the slotted link (47) having a slot (53) which receives said eccentric pin (46) to translate rotational movement of said knob (rotatable knob of MILLER ET AL. or 5 or 6 of WIMMER) into linear movement of said fixing element (50).

**As to claim 15,** HORGAN, JR. in view of MILLER ET AL. and WIMMER discloses the fixing device of claim 14 as discussed above, and WIMMER also discloses that an arcuate slot (19 or 20) in said profile (4 or 3), said eccentric pin (21 or 22) being received in said arcuate slot (19 or 20), said arcuate slot (19 or 20) limiting rotational movement of said knob (6 or 5).

**As to claim 16,** HORGAN, JR. in view of MILLER ET AL. and WIMMER discloses the fixing device of claim 15 as discussed above.

None of HORGAN, JR., MILLER ET AL., and WIMMER explicitly discloses that the arcuate slot covers a quarter circle.

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However, it is well settled that neither changes in size/proportion (i.e., dimension) nor changes in shape constitute patentable differences. For changes in size/proportion (i.e., dimension), see *In Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), wherein the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. For changes in shaped, see *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966), wherein the court held that the configuration of the claimed disposable plastic nursing container was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed container was significant.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the fixing device of HORGAN, JR. in view of MILLER ET AL. and WIMMER by making the arcuate slot cover a quarter circle in order to allow for a greater length of the fixing element to be extended from the profile for better securement of the wall and because neither size/proportion (i.e., dimension) nor shape constitute a patentable difference.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Patents cited of interest as disclosing various configurations of fixing devices include: U.S. Patent No. 6,108,989 to Kordes et al.; U.S. Patent No. 6,851,730 to Haab et al.; U.S. Patent No. 1,524,005 to Dodge; U.S. Patent No. 4,555,880 to Gzyn et al.; U.S. Patent No. 6,018,915 to Pomish et al.; and U.S. Patent No. 4,395,854 to White et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gay Ann Spahn whose telephone number is (571)-272-7731. The examiner can normally be reached on Monday through Friday, 10:30 am to 7:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (571)-272-6842. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.



Cari D. Friedman  
Supervisory Patent Examiner  
Group 3600

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

<sup>GAS</sup>  
Gay Ann Spahn, Patent Examiner  
March 30, 2007